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11 Attorneys for USACM Liquidating Trust

12 **UNITED STATES BANKRUPTCY COURT**
13 **DISTRICT OF NEVADA**

14 In re:

15 USA Commercial Mortgage Company,

16 Debtor.

Case No. BK-S-06-10725-LBR

Chapter 11

**DECLARATION OF GEOFFREY L.
BERMAN IN SUPPORT OF
OMNIBUS OBJECTION OF USACM
TRUST TO PROOFS OF CLAIM
BASED UPON INVESTMENT IN
THE BUNDY CANYON (\$7.5
MILLION) LOAN**

17 Hearing Date: August 30, 2011

18 Hearing Time: 10:30 a.m.

19 Estimated Time for Hearing: 10 minutes

20 I, Geoffrey L. Berman, declare under penalty of perjury:

21 1. I am an adult person competent to testify in court.

22 2. I make this declaration based upon my personal knowledge, and upon the
23 records USA Commercial Mortgage Company.

24 3. I am the Trustee of the USACM Liquidating Trust (“USACM Trust”),
25 which is an entity created by the Debtors’ Third Amended Joint Chapter 11 Plan of
26 Reorganization (“Plan”), in the jointly-administered bankruptcy cases, In re USA
Commercial Mortgage Company, BK-S-06-10725-LBR, pending in the United States
Bankruptcy Court for the District of Nevada.

1 4. USACM circulated an Offer Sheet to prospective Direct Lenders soliciting
2 funding for an acquisition and development loan to a borrower identified as “Bundy
3 Canyon Land Development, LLC.” A copy of the Offer Sheet is attached hereto as
4 **Exhibit B** and incorporated by this reference. The Offer Sheet stated that the Borrower
5 was a joint venture between USA Investment Partners and two individuals, Chris
6 Pederson, and Kevin Everett. *Id.* The total loan amount proposed was \$7,500,000. *Id.*
7 The Offer Sheet described the investment as a “First Trust Deed Investment” and noted
8 that the investment would be secured by a first deed of trust on approximately 43 acres of
9 property to be developed into approximately 172 lots, located on Bundy Canyon Road in
10 Riverside County, California near the city of Murietta. *Id.* The loan to value ratio was
11 42% based on the sell out price for the approved mapped lots.¹ *Id.*

12 5. On August 17, 2005, Borrower made and delivered to various lenders,
13 including the Direct Lenders identified in **Exhibit A**, a “Promissory Note Secured by
14 Deed of Trust” (the “Note”) and a Loan Agreement. The Note and Loan Agreement
15 provided for a loan of up to \$7,500,000, with an initial loan in the amount of \$4,900,000.
16 *Id.* Pursuant to the Loan Agreement, the loan was intended to acquire the real property.
17 *Id.* The Note was secured by a “Deed of Trust, Assignment of Rents, Security Agreement
18 and Fixture Filing” (the “Deed of Trust”) from the Borrower in favor of the Direct
19 Lenders that was recorded in the official records of Riverside County, California on
20 August 25, 2005 at Instrument Number 20050698067, as were subsequent amendments to
21 the Deed of Trust to secure subsequent loan advances.

22 6. The Note was also supported by a guaranty from Tom Hantges and Joseph
23 Milanowski.

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25
26

¹ The Trustee has been unable to locate an appraisal for this loan and it does not appear that one was ever obtained.

7. The USACM “Loan Summary” dated July 31, 2006 and filed in this case shows that Borrower was “Non-Performing” on the Note as of July 31, 2006 . During this bankruptcy case through the transfer of servicing to Compass, USACM treated the Direct Lenders with respect to any interim payments by the borrower in accordance with this Court’s orders and the confirmed Plan.

8. Because the Borrower included USA Investment Partners L.P., an affiliate of USACM, I believe there was the potential for a conflict of interest in the manner in which USACM brokered and serviced this loan.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: July 26, 2011

/s/ *Geoffrey L. Berman*
Geoffrey L. Berman

Copy of the foregoing mailed (without Exhibits) by first class postage prepaid U.S. Mail on July 26, 2011 to All investors listed on Exhibit A Attached.

s/ Matt Burns
Matt Burns, Paralegal